Filed 11/17/03 Barnes v. Cal. Unemployment Ins. Appeals Bd. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

DANNY BARNES, Plaintiff and Appellant, v. CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD, Defendant and Respondent, SPINCYCLE, LLC. Real Party in Interest	B159429 (Los Angeles County Super. Ct. No. BS066890)

APPEAL from a judgment of the Superior Court of Los Angeles County. David P. Yaffe, Judge. Reversed and remanded with directions.

Danny Barnes, Plaintiff and Appellant, in propria persona.

No appearance for Respondent.

Jackson Lewis LLP, Mark R. Atwood and Drew L. Alexis for Real Party in Interest.

Danny Barnes appeals from a judgment of the superior court denying his petition for a writ of mandate compelling the California Unemployment Insurance Appeals Board (CUIAB) to set aside its decision he had not shown good cause for his failure to file a timely appeal from the denial of benefits. The two issues before us are whether an appeal to this court lies from the superior court's denial of the petition for writ of mandate and whether substantial evidence exists to support the trial court's denial of the writ. The denial of Barnes's writ is reviewable by this court, and we conclude the judgment of the superior court should be reversed because the CUIAB applied an improper standard of "good cause."

FACTS AND PROCEEDINGS BELOW

Barnes was employed as a customer service representative at a facility owned and operated by Spincycle, LLC, real party in interest. When Spincycle terminated Barnes's employment he filed a claim for unemployment insurance benefits with the Employment Development Department (EDD). On December 29, 1999 the EDD issued a Notice of Determination/Ruling denying Barnes's claim. This notice advised Barnes he had the right to file an appeal "within twenty (20) days of the mail date of the notice and not later than 1/18/00." Barnes's appeal dated January 26, 2000, eight days after the due date, was received on January 31, 2000.

At the hearing on his appeal Barnes explained to the administrative law judge (ALJ) he filed his appeal late because he was under stress and duress and suffering from depression. He also testified he was a single parent and student who had just been evicted from his home. The ALJ asked Barnes, considering all of the stress in his life and in light of the other tasks he was able to accomplish, why was he not able to file the appeal on time. To this Barnes answered: "I actually thought that I had a little longer … I didn't really look at the appeal notice." Based on this admission, the ALJ found Barnes did not show good cause for his untimely appeal and dismissed the case.

Barnes appealed the ALJ's decision to the CUIAB where it was affirmed. The CUIAB conducted an independent review of all of the facts, including Barnes's testimony he was under a lot of stress because of his working environment. The CUIAB found no material errors in the statement of facts and found the reasons for the decision properly applied the law to the facts. In particular, the board found Barnes's explanation of being under stress and that he did not thoroughly read the notice of determination did not constitute good cause for his late appeal under Unemployment Insurance Code section 1328.[1]

Barnes then filed a petition for writ of mandate with the Los Angeles County Superior Court. After conducting an independent review of the record, the superior court denied the petition. The court concluded Barnes failed to show good cause for the late filing of his appeal.

Barnes filed a timely notice of appeal from the judgment denying his petition for writ of mandate.

DISCUSSION

I. THE SUPERIOR COURT'S DENIAL OF BARNES'S PETITION FOR WRIT OF MANDATE IS PROPERLY REVIEWABLE BY THE COURT OF APPEAL.

The judgment of a superior court denying a writ of mandate is reviewable in this court by appeal.[2]

---

[1] This statute allows a claimant 20 days to appeal from the denial of a claim. It also provides, "The 20-day period may be extended for good cause, which shall include, but not be limited to, mistake, inadvertence, surprise or excusable neglect."

[2] Code of Civil Procedure, section 904.1, subdivision (a)(1); *Kennedy v. South Coast Regional Com.* (1977) 68 Cal.App.3d 660, 666.

Respondent incorrectly asserts Barnes's claim falls under the exception provided in Code of Civil Procedure section 904.1, subdivision (a)(1)(C) which denies the right to appeal from "a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or the superior court in a county in which there is no municipal court . . . ." This provision is an anachronism since California no longer has municipal courts. But in any event this provision would not apply here because the writ would have been directed to the CUIAB, not to a municipal court or a superior court in a county in which no municipal court existed. Therefore, Barnes's appeal to this court is proper.

II. THE CUIAB APPLIED AN IMPROPER STANDARD OF 'GOOD CAUSE.'

"In reviewing a decision of the [CUIAB], the superior court exercises its independent judgment on the evidentiary record of the administrative proceedings and inquires whether the administrative agency's findings are supported by the weight of the evidence."[3] On review of the judgment of the superior court, "the appellate court is confined to an inquiry whether the findings and judgment of the trial court are supported by substantial, credible and competent evidence [citations] unless the probative facts are uncontradicted, not susceptible of opposing inferences, and, as a matter of law, compel a different conclusion from that reached by the trial court."[4] Thus, "[t]he appellate court's review of the superior court judge's gleanings from the administrative transcript is just as circumscribed as its review of a jury verdict or judge-made finding after a conventional trial."[5] This substantial evidence standard of review applies to review of the trial court's

---

[3] *Agnone v. Hansen* (1974) 41 Cal.App.3d 524, 527.

[4] *Agnone v. Hansen*, *supra*, 41 Cal.App.3d at page 527.

[5] *Lacy v. California Unemployment Ins. Appeals Bd.* (1971) 17 Cal.App.3d 1128, 1134.

denial of mandamus which relied on the CUIAB's determination the appellant did not show good cause for a late appeal from the denial of benefits.[6]

The CUIAB has held that in determining "good cause" for a late filing "[t]he mere advancing of an excuse is not sufficient . . . ."[7] Rather, the claimant must show "a substantial or compelling reason" for his or her inaction.[8] The courts have upheld the CUIAB's determinations of lack of good cause in cases similar to the one before us where the excuse involved illness and housing problems or the failure to read the notice of the right to appeal.[9]

One case which did reverse a finding of no good cause was *Gibson v. Unemployment Ins. Appeals Bd.*[10] In *Gibson*, the claimant's attorney filed the appeal late because a secretary failed to note the appeal deadline on his calendar.[11] Once the attorney discovered the error he submitted the appeal three days late.[12] Our Supreme Court reversed the judgment of the superior court upholding the board's determination of no

---

[6] *Martinez v. Unemployment Ins. Appeals Bd.* (1976) 63 Cal.App.3d 500, 504.

[7] *In the Matter of Vialovos* (1972) CUIAB Case No. 72-1384, Precedent Benefit Decision No. 144 at page 4.

[8] *In the Matter of Vialovos*, *supra,* CUIAB Case No. 72-1384, P-B-144 at page 4. The board's construction of the statute is, of course, entitled to great weight. *Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753, 756.

[9] In *Martinez v. Unemployment Ins. Appeals Bd.* (1976) 63 Cal.App.3d 500, 505 petitioner filed his appeal 20 days late. His excuses were illness in his family and the need to find another place to live. In affirming the superior court's denial of petitioner's writ of mandate, the court focused on the fact that petitioner caused the delay himself, noting: "All he had to do was sign the notice of appeal form and mail it."

In *Amaro v. Unemployment Ins. Appeals Bd.* (1977) 65 Cal.App.3d 715, 718 petitioner filed her appeal one month late. She testified she did not read the statement about a time limit for an appeal and only read the part concerning the denial of benefits The court held this one month period could not be considered a minimal delay or excusable inadvertence sufficient to constitute "good cause" to extend the time limit for filing an appeal.

[10] *Gibson v. Unemployment Ins. Appeals Bd.* (1973) 9 Cal.3d 494.

[11] *Gibson, supra*, 9 Cal.3d at page 497.

[12] *Gibson, supra*, 9 Cal.3d at page 497.

good cause.[13] Prior to *Gibson*, the CUIAB operated on a strict construction of section 1328 in which no error of an applicant or his counsel, no matter how reasonable or excusable, could constitute "good cause."[14] In *Gibson* the court held such an inflexible rule defeats the purpose of the unemployment insurance code and its informal nature.[15]

As an integral part of the compensatory scheme under the Unemployment Insurance Code, section 1328 must be construed liberally in order to promote the legislative objective of reducing the hardship on the unemployed worker.[16] Furthermore, courts have recognized the persons directly affected by this legislation are generally lacking both legal training and the funds needed to retain private counsel.[17] Thus, the Unemployment Insurance system is informal and non-technical.[18]

Unemployment Insurance Code section 1328 provides at least four grounds which constitute "good cause" for extending the 20-day filing period.[19] These "shall include, but not be limited to, mistake, inadvertence, surprise, or excusable neglect."[20] Whereas the *Gibson* court applied a standard of excusable neglect, the statute does not limit a court's inquiry to that standard alone.

Here, the lower court erred in following the decision of the CUIAB, which required Barnes to demonstrate a "substantial or compelling"[21] reason for his untimely appeal. Such a standard is too stringent and fails to consider the 1975 amendment to section 1328, which extended the definition of good cause to include mistake,

---

13 *Gibson, supra*, 9 Cal.3d at page 501.

14 *Gibson, supra*, 9 Cal.3d at page 498.

15 *Gibson, supra*, 9 Cal.3d at page 499.

16 *Gruschka v. Unemployment Ins. Appeals Bd.* (1985) 169 Cal.App.3d 789, 792.

17 *Gibson, supra*, 9 Cal.3d at page 499.

18 *Gibson, supra*, 9 Cal.3d at page 499.

19 West's Annotated Unemployment Insurance Code section 1328.

20 West's Annotated Unemployment Insurance Code section 1328.

21 *In the Matter of Vialovos, supra,* CUIAB Case No. 72-1384, P-B-144 at page 4.

inadvertence, surprise, or excusable neglect. Instead, the CUIAB relied upon a precedent case which demands a substantial or compelling reason to demonstrate good cause.[22] While this standard may have been applicable prior to the 1975 amendment, the Legislature's subsequent clarification of the situations which may constitute good cause must be considered in Barnes's case. Much like an attorney who made a mistake in calendaring, Barnes believed he had "a little longer" to file his appeal. Moreover, the record reflects Barnes attributed his oversight to stress and depression. Theses facts clearly demonstrate a situation involving mistake or inadvertence.

There is no reason to remand this case to the superior court for a hearing on whether petitioner has shown "good cause" because the hearing's only reasonable outcome would be a finding of good cause and the issuance of mandate directing the ALJ to process Barnes's appeal on the merits. In applying the facts as found by the CUIAB to the proper standard of mistake or inadvertence good cause is established as a matter of law for the reasons set forth below.

III. AS A PROPRIA PERSONA LITIGANT BARNES IS ENTITLED TO TREATMENT EQUAL TO THAT OF AN ATTORNEY REPRESENTING A PARTY.

In propria persona litigants are not entitled to special exemptions from the California Rules of Court or Code of Civil Procedure.[23] Except when a particular rule provides otherwise, the rules of civil procedure must apply equally to parties represented by counsel and those who forego attorney representation.[24] By analogy, a pro per litigant who has filed a late unemployment insurance appeal due to mistake or inadvertence should be given the same treatment as an attorney who filed a late appeal on behalf of his client by reason of mistake.

---

[22] *In the Matter of Vialovos, supra,* CUIAB Case No. 72-1384, P-B-144 at page 4.

[23] *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284.

[24] *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984.

As previously noted, in *Gibson* the Supreme Court reversed the denial of a writ of mandate where the attorney filed a late appeal due to a mistake in calendaring.[25] In the present case, Barnes's mistake in not thoroughly reading the appeal notice was due to depression and the stress of being a single parent who had just been evicted from his home. The CUIAB failed to consider whether Barnes's reasons could be deemed mistake or inadvertence. Rather, the board lumped mistake, inadvertence, excusable neglect, and surprise into one rigid rule. If a pro per litigant like Barnes cannot enjoy special treatment neither should he be denied equal treatment to that of a member of the bar. Thus, the board should have treated Barnes's mistake or inadvertence as to the deadline for his appeal similar to a situation in which an attorney's calendar reflects an incorrect filing date.

IV. BARNES'S APPEAL WAS NOT EXCEPTIONALLY LATE AND THE LATENESS WAS NOT PREJUDICIAL.

In light of the Legislature's intent the Unemployment Insurance statutes be liberally applied we find Barnes's late appeal was excusable and did not result in prejudicial delay. In *Gibson*, the court found no justification for an administrative construction of section 1328 to preclude relief in cases of brief, non-prejudicial delay arising from excusable neglect of counsel.[26] The *Gibson* court found there was excusable non-prejudicial delay because the appeal was only three days late and because neither the board nor the petitioner's former employer claimed prejudice arising from this insignificant tardiness.[27] The court found the three days excusable considering the filing period at the time was ten days from the mailing of the determination notice.

In the present case, neither Spincycle nor the board claims prejudice from Barnes's eight-day delay in filing his appeal. Furthermore, the legislature has now

---

[25] *Gibson, supra,* 9 Cal.3d 494.

[26] *Gibson, supra,* 9 Cal.3d at page 496.

[27] *Gibson, supra,* 9 Cal.3d at page 501.

extended the filing period to 20 days.[28] However, considering the fact the filing period runs from the date of the mailing and not the date of receipt, the petitioner actually had less than 20 days to file his appeal. Keeping in mind the speed at which the mail is delivered, an individual has roughly 15 days in which to file an appeal, whereas an appellant in a civil case has 60 days minimum from the mailing of the notice of entry of judgment in which to file an appeal.[29] It serves no purpose to deny an appeal where the delay is minimal and Spincycle does not claim prejudice.[30]

DISPOSITION

The judgment is reversed and the cause is remanded to the trial court with directions to issue a writ of mandate directing the Unemployment Insurance Appeals Board to reverse its decision and remand the petitioner's appeal for a decision on the merits. Appellant is awarded his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

JOHNSON, J.

We concur:

PERLUSS, P.J. WOODS, J.

---

[28] West's Annotated California Unemployment Insurance Code section 1328.

[29] California Rules of Court, rule 2(a).

[30] *Flores v. Unemployment Ins. Appeals Bd.* (1973) 30 Cal.App.3d 681, 684.